

FCC Received February 15, 1994 @ 2:05 P.M.

Donna A. Bradshaw

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

PR DOCKET NO. 93-231

Charleston, West Virginia

RECEIVED

FEB 25 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DATE OF HEARING: February 1, 1994

VOLUME: 2

PLACE OF HEARING: Washington, D.C.

PAGES: 40-208

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:

CAPITOL RADIOTELEPHONE COMPANY, INC.)
(a/k/a CAPITOL RADIOTELEPHONE, INC.)
or CAPITOL RADIO TELEPHONE, INC.)
d/b/a CAPITOL PAGING AND)
RAM TECHNOLOGIES, INC.)

Charleston, West Virginia)
-----)

P.R. DOCKET NO. 93-231

RECEIVED

FEB 2 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The above-entitled matter came on for hearing pursuant to notice before Judge Joseph Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Tuesday, February 1, 1994 at 10:05 a.m.

APPEARANCES:

On behalf of Capitol Radiotelephone Incorporated:

KENNETH E. HARDMAN, Esquire
T.D. KAUFFELT, Esquire
1255 23rd Street, N.W.
Suite 830
Washington, D.C. 20037-1170

On behalf RAM Technologies, Incorporated:

FREDERICK M. JOYCE, Esquire
CHRISTINE McLAUGHLIN, Esquire
Joyce and Jacobs
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037

On behalf of the Chief, Private Radio Bureau:

Y. PAULETTE LADEN, Esquire
CAROL FOX FOELAK, Esquire
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

I N D E X

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Robert Moyer, Jr.				
By Ms. Foelak	68		103	
By Mr. Hardman		77		97,106
By Mr. Joyce			86	
James G. Walker				
By Ms. Foelak	108		183	
By Mr. Joyce	132		188	
By Mr. Hardman		142		204

E X H I B I T S

	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
<u>PRIVATE RADIO BUREAU:</u>			
No. 1	63		
No. 2	63		73
No. 3	63	110	
No. 4	64		125
No. 5	64	132	
No. 6	64		
No. 7	64		
No. 8	65		
No. 9	65		
No. 10	65		
No. 11	66		
No. 12	66		
No. 13	66		
No. 14	67		
No. 15	67		
No. 26	83		

Hearing Began: 10:05 a.m. Hearing Ended: 4:05 p.m.
 Lunch Break Began: 12:28 p.m. Lunch Break Ended: 1:33 p.m.

P R O C E E D I N G S

1 JUDGE CHACHKIN: On the record. This proceeding
2 concerns the revocation of various licenses of Capitol
3 Radiotelephone, Inc. as well as the imposition of a forfeiture
4 against Capitol Radiotelephone, Inc. In the designation
5 order, there was also an issue concerning the grant of the
6 application of Capitol Radiotelephone, Inc. for a private
7 carrier paging facility in Huntington and Charleston, West
8 Virginia. However, that application has been dismissed. May
9 I have the appearances on behalf of the parties? On behalf of
10 Capitol Radiotelephone, Inc.?

12 MR. HARDMAN: Kenneth E. Hardman and T.D. Kauffelt.

13 JUDGE CHACHKIN: On behalf of the Chief, Private
14 Radio Bureau?

15 MS. FOELAK: Carol Fox Foelak and Paulette Laden.

16 JUDGE CHACHKIN: And on behalf of RAM Technologies,
17 Inc.?

18 MR. JOYCE: Frederick M. Joyce and Christine
19 McLaughlin.

20 JUDGE CHACHKIN: There are some preliminary matters
21 which the parties wish to consider, I assume, before we get
22 to the --

23 MS. LADEN: Yes, Your Honor.

24 JUDGE CHACHKIN: Go ahead, Ms. Laden.

25 MS. LADEN: One preliminary matter we had, Your

1 Honor, was we had noticed for cross examination a number of
2 witnesses and there has been filed an opposition to our
3 witness notification.

4 JUDGE CHACHKIN: Yes. And what is your response to
5 the opposition?

6 MS. LADEN: Your Honor, there is an opposition to
7 our notification of Mr. Dan Stone. Mr. Stone is the owner of
8 Capitol Radiotelephone.

9 JUDGE CHACHKIN: Has he submitted a declaration?

10 MS. LADEN: No, he has not, Your Honor. He does, in
11 our opinion, have material evidence to give. For example, he
12 was present during the investigation by the Commission's
13 F.O.B. inspectors and there is a suggestion in the F.O.B.
14 report, which is at the Private Radio Bureau's Exhibit No. 3,
15 Your Honor. There is a suggestion in that report that Mr.
16 Stone -- there is some speculation about Mr. Stone's
17 involvement in an incident involving the loss of the testing
18 showing on a screen and without Mr. Stone's testimony, we
19 probably can't get to the bottom of that, Your Honor.

20 Mr. Wilson is also an employee of Capitol. He also
21 is not sponsoring testimony. He was present during the
22 investigation and as the report also reflects, he walked
23 through with the engineers and --

24 JUDGE CHACHKIN: Well, did you subpoena Mr. Wilson?

25 MS. LADEN: No, Your Honor. We have not.

1 JUDGE CHACHKIN: Well, he should -- you have the
2 burden -- the burden of proof. They have no obligation to
3 provide employees for you.

4 MS. LADEN: Well, Your Honor, they are under the
5 control of the parties.

6 JUDGE CHACHKIN: But he's only -- in the case of Mr.
7 Wilson, he's only an employee. If you want him, you have to
8 subpoena him. He's your witness. You have to pay his
9 expenses certainly if you want him.

10 MS. LADEN: Well, Your Honor, our position is that
11 he -- that they are both principles of the licensee and that
12 they have material evidence and if they're not produced, then
13 Your Honor, we would ask Your Honor to make adverse inferences
14 to infer that their testimony would be unfavorable.

15 JUDGE CHACHKIN: Mr. Hardman, do you have any
16 response?

17 MR. HARDMAN: Yes, Your Honor. If the government
18 feels that these individuals had testimony that was material
19 to their case, they had an obligation to list them as their
20 witness before you even get to the question of whether we
21 would provide them voluntarily or require them to be
22 subpoenaed. But the minimum the government had to do was list
23 them in their direct case as witnesses, which they did not do.
24 You can't cross examine -- you can only cross examine
25 witnesses of an adverse party and we're not calling them as a

1 witness. So I don't understand the government's procedure
2 here.

3 JUDGE CHACHKIN: Well, do you agree with, however,
4 that they may have material evidence in the case?

5 MR. HARDMAN: Not in our opinion, Your Honor. We
6 submitted, as part of our direct case, all the evidence we
7 deemed material with due regard for the rule against
8 accumulative evidence and if the government feels differently,
9 then that may be evidence that's material to their case. But
10 they have the obligation to so state under the procedures that
11 were established.

12 JUDGE CHACHKIN: Ms. Laden, do you have any further
13 response?

14 MS. LADEN: No, Your Honor. I did want to address
15 several other witnesses that we also noticed.

16 JUDGE CHACHKIN: Yes. Well, as far as these
17 witnesses are concerned, if at the end of this hearing I feel
18 that they are essential witnesses, I have some authority to
19 require their appearance. But I don't know what's going to
20 happen with the case yet. I haven't heard all the witnesses.

21 But Mr. Hardman is certainly correct that if you
22 wanted them as your witnesses, you should've put them in your
23 list of the witnesses that you want and not wait for cross
24 examination because Mr. Hardman has no responsibility. The
25 burdens all fall on you. So they're not required for cross

1 examination. If you wanted them for direct examination, then
2 you should've listed them as your witnesses, which you didn't
3 do.

4 Who are these other witnesses? So I'm not going to
5 require Mr. Hardman to produce these witnesses since they're
6 your witnesses and you should've listed them if you wanted
7 them, if you needed them for your direct case. Who are these
8 other witnesses you want?

9 MS. LADEN: The other witness, one's Calvin R.
10 Basham. He is a sponsoring witness of Capitol's proposed
11 exhibit. I should say he's not a sponsoring witness since
12 he's not appearing, but his declaration is at Exhibit --

13 JUDGE CHACHKIN: What exhibit?

14 MS. LADEN: -- 12. Capitol Exhibit 12. That
15 declaration, Your Honor, begins at Page 7 of that exhibit.
16 It's a declaration under penalty of perjury. It's written
17 testimony, but -- and therefore, we would like --

18 JUDGE CHACHKIN: Page 7?

19 MS. LADEN: Page 7, yes, Your Honor. I should point
20 out, Your Honor, that with respect to Mr. Basham and several
21 other witnesses that I'll mention, we will have objection to
22 the -- an objection to the receipt of the declaration. We
23 consider it irrelevant. But if it should come in, we believe
24 we have the right to cross examine Mr. Basham.

25 JUDGE CHACHKIN: Well, certainly if it's being

1 offered for the truth of the matters contained therein, you
2 would have a right to cross examine Mr. Basham. But it
3 appears to me that this and other documents are being offered
4 merely as background to show what's transpired up to this
5 point. It's not being offered for the truth and under those
6 circumstances, then you're not entitled -- it won't -- they
7 will not be received for the truth, but merely the fact that
8 such pleadings were filed and such statements were made. But
9 they will not be received for the truth of the matters and I
10 assume that's Mr. Hardman's purpose. If he -- obviously if he
11 wants to receive it for the truth of the matter, certainly the
12 Bureau would have a right to cross examine.

13 MR. HARDMAN: That's correct, Your Honor. In this
14 case, the -- this is a declaration that was attached to a
15 filing at the FCC, the foundation of which -- the
16 authentication of which is -- will be done by Mr. Raymond. So
17 you're absolutely right --

18 JUDGE CHACHKIN: But you're not offering this as Mr.
19 Basham's testimony in this proceeding.

20 MR. HARDMAN: No, Your Honor. This is -- as you
21 say, it's background.

22 JUDGE CHACHKIN: All right. It's for that purpose
23 and I assume the other witnesses that you wanted for cross
24 examination were also part of a document which was filed, an
25 opposition pleading.

1 MS. LADEN: That's correct, Your Honor.

2 JUDGE CHACHKIN: And again, it's not being received
3 for the truth. If it has any relevance, it would be only to
4 set forth the background, how we got to where we are today.

5 MS. LADEN: If they're not being offered for the
6 truth therein, then we certainly have no need to cross
7 examine.

8 JUDGE CHACHKIN: Well, I have to assume they're not
9 being offered for the truth. Otherwise, obviously they would
10 be rejected.

11 MR. HARDMAN: As a matter of fact, Your Honor, I'd
12 be perfectly happy to strike them. But for the completeness
13 of the document, that's why I submitted the entire document,
14 so there could be no objection to selected --

15 JUDGE CHACHKIN: All right. I understand. That's
16 what I understood was the purpose, that they weren't being
17 offered for the truth, but merely to show the background, to
18 show all the pleadings which were filed before the issuance of
19 the Commission of its Order to Show Cause. Anything else?

20 MS. LADEN: Your Honor, Ms. Foelak -- oh, that's
21 correct, Your Honor. I apologize. I did forget one other
22 preliminary matter. We had an objection to producing Ms.
23 Foelak as a witness. Ms. Foelak is not sponsoring any
24 exhibits and she doesn't have any personal knowledge of the
25 facts underlying the issues and we did file an objection to

1 | that testimony.

2 | JUDGE CHACHKIN: Mr. Hardner, why do you want Ms.
3 | Foelak?

4 | MR. HARDMAN: Your Honor, first of all, we noticed
5 | in our direct case Ms. Foelak as a witness on our behalf. So
6 | there's -- at least we covered ourselves in terms of the
7 | procedure of this.

8 | JUDGE CHACHKIN: Well, again, this is only
9 | background, whatever. Are you putting something in the direct
10 | case?

11 | MR. HARDMAN: Yes. Under Tab 19, we designated
12 | Witness Foelak and stated that, you know, the subject that she
13 | would be asked to testify on. At the time, Ms. Foelak had a
14 | line position in the Private Radio Bureau as chief of the -- I
15 | forget exactly what the title was, chief of compliance for
16 | land mobile microwave or chief of the enforcement and as such,
17 | she participated in a number of the events that occurred that
18 | are now the subject of the hearing.

19 | In particular, she is the author of the Exhibit
20 | CAP-19 which was the instruction to the Field Operations
21 | Bureau to conduct the discussion -- or conduct the inspection
22 | which will be the subject of testimony and in addition, in
23 | Exhibit CAP-20, Page 6, there's a -- this is marked for
24 | identification anyway.

25 | That is the letter by Mr. Capehart from RAM to Mr.

1 Walker in which -- at the top of Page -- at the top of Page 6,
2 it states that certain information relating to interference
3 and the cause -- in particular, the cause of interference was
4 supplied to Mr. Shiben and Ms. Foelak at our meeting on April
5 4, 1991 in Washington and since Ms. Foelak was named as a --
6 as being in attendance at that meeting, her testimony as to,
7 No. 1, whether it occurred and if so, what transpired is
8 certainly material to the interference issue.

9 JUDGE CHACHKIN: Ms. Laden?

10 MS. LADEN: First of all, Your Honor, there is no
11 record in the Bureau of any meeting occurring on April the
12 4th. There was a meeting on April 2nd which was attended by
13 counsel for Capitol. Ms. Foelak doesn't have any personal
14 knowledge of any of the matters. She was not a participant in
15 the inspection. She did sign the letter which is at the
16 exhibit. We consider the letter asking for the inspection to
17 be irrelevant. It doesn't have any facts upon which Your
18 Honor could make findings. It's still not clear to me what
19 her testimony would offer and it would certainly hurt the
20 Bureau's ability to present its case by calling counsel for
21 the Bureau as a witness.

22 JUDGE CHACHKIN: Mr. Hardman, are you contending
23 somehow that -- you said she met with Mr. Walker?

24 MR. HARDMAN: No, no. According to Mr. Capehart, he
25 met with Mr. Shiben and Ms. Foelak on April 4, 1991 in

1 Washington.

2 JUDGE CHACHKIN: Who is Mr. Capehart?

3 MR. HARDMAN: Mr. Capehart is an employee of RAM and
4 was, you know, someone who handled, you know, activities on
5 behalf of RAM in this whole proceeding. According to him,
6 there was a meeting on April 4 in Washington. This is a
7 letter dated April 10, six days later. Now if he's wrong,
8 that goes to his credibility and he's a witness.

9 JUDGE CHACHKIN: Well, you haven't called him as a
10 witness. Is he going to testify in this proceeding?

11 MS. LADEN: He's testifying as the Bureau's witness,
12 Your Honor.

13 MR. JOYCE: Your Honor, I can -- if I may interject,
14 I can clarify. I think there's simply a misunderstanding here
15 on Mr. Hardman's part. That's -- I've discussed this letter
16 with Dale Capehart. That's simply a typographical error.
17 There was no April 4th meeting. It was an April 2nd meeting
18 that Ms. Laden refers to.

19 MR. HARDMAN: Well, Your Honor, I appreciate that
20 counsel are willing to testify, one, that that meeting didn't
21 occur, and two, that this is a typographical error. But this
22 is a written representation to Mr. Walker and if it's a
23 typographical error and he meant to refer to April 2nd, then
24 there are other questions about what happened at that April
25 2nd meeting that need to be asked.

1 JUDGE CHACHKIN: Who was at the April 2nd meeting?

2 MR. HARDMAN: Well, I -- among others, I was at the
3 April 2nd meeting. But I can tell you that none of this
4 happened in my presence.

5 JUDGE CHACHKIN: What happened that you're talking
6 about? I don't understand this.

7 MR. HARDMAN: There was a meeting on April 2, 1991
8 that's referred to in the Hearing Designation Order. It was
9 --

10 JUDGE CHACHKIN: Where is it referred to in the
11 Hearing Designation Order? Oh, you're talking about the --
12 you're talking about the meeting that convened to resolve the
13 interference complaints? Is that what you're talking about?

14 MR. HARDMAN: That's the way it's -- that's the way
15 the Hearing Designation Order characterizes it.

16 JUDGE CHACHKIN: And you're saying what, this
17 meeting didn't occur or what?

18 MR. HARDMAN: The meeting -- there was a meeting on
19 April 2nd.

20 JUDGE CHACHKIN: Well, is there something that --

21 MR. HARDMAN: But this -- what it said in the letter
22 did not happen in my presence. If it didn't happen in my
23 presence and it was at another meeting where it did happen, in
24 which case there was an ex-party meeting.

25 JUDGE CHACHKIN: Well, we're not -- we don't have an

1 ex-party issue here. We're not getting into that.

2 MR. JOYCE: There was no such meeting, Your Honor.

3 JUDGE CHACHKIN: You say this is -- there's a
4 reference in what, CAP-what, exhibit -- what is your exhibit
5 number? Apparently there's confusion here.

6 MR. HARDMAN: Exhibit CAP-20 which is behind Tab 22,
7 Page 6.

8 JUDGE CHACHKIN: Page 6.

9 MR. HARDMAN: The top of the -- the paragraph at the
10 top of the page.

11 JUDGE CHACHKIN: Well, I don't understand. You're
12 introducing this. Why are you introducing this if you say it
13 never happened?

14 MR. HARDMAN: Well, there are two reasons to
15 introduce it, one of which is related to this, is -- goes to
16 Mr. Capehart's -- potentially goes to his credibility because
17 he's making a representation -- a written representation in
18 this letter six days later about events that occurred at a
19 meeting in Washington either on April 4 or April 2nd. If it
20 was -- if he's right that it's April 4, then that's a meeting
21 I don't know anything about.

22 JUDGE CHACHKIN: Well, apparently you can get a
23 stipulation from the Bureau and the parties that there was no
24 meeting on April 4th.

25 MR. HARDMAN: I would be happy to get that

1 stipulation. I tried to get that stipulation and they
2 wouldn't do it.

3 MR. JOYCE: No one asked me for that stipulation,
4 Your Honor. I stipulate to it.

5 JUDGE CHACHKIN: Is the Bureau willing to stipulate
6 there was no meeting on April 4th?

7 MS. LADEN: Yes, Your Honor.

8 JUDGE CHACHKIN: All right. That stipulation's
9 accepted. That takes care of that problem.

10 MR. HARDMAN: Now, secondly, can we get a
11 stipulation that this is a typographical error, that it should
12 refer to April 2nd?

13 MR. JOYCE: Yes.

14 JUDGE CHACHKIN: Well, Mr. Capehart wrote it, so I
15 don't know how the parties could stipulate except Mr. Hart
16 (sic) is prepared to stipulate it should be April 2nd. There
17 was no meeting on April 4th.

18 MR. HARDMAN: And the third thing is whether the
19 Bureau will stipulate that this information was not, in fact,
20 given to -- at that meeting on April 2nd.

21 JUDGE CHACHKIN: What is the Bureau's position?

22 MS. LADEN: First of all, Your Honor, we think that
23 this letter is irrelevant.

24 JUDGE CHACHKIN: It may be irrelevant, but the fact
25 is Mr. Capehart's going to testify in this proceeding and

1 | presumably there's going to be an attempt to impeach him.

2 | MS. LADEN: Yes, Your Honor, but --

3 | JUDGE CHACHKIN: And then the question is -- I don't
4 | know what Mr. Capehart's going to testify to, whether this
5 | conversation occurred or not. But depending on what he says,
6 | it may or may not be necessary for Bureau counsel to testify
7 | if they were present at the meeting and so I'm going to
8 | reserve a ruling on this until after Mr. Capehart testifies.

9 | MR. HARDMAN: Thank you, Your Honor. The only other
10 | issue related to that is if the Bureau will stipulate to the
11 | authenticity of Exhibit CAP-19. Then that would be -- the
12 | issue you reserve would be the only one that would relate to
13 | Witness Foelak's testimony that would not have been resolved.

14 | JUDGE CHACHKIN: What is 19?

15 | MR. HARDMAN: Behind Tab 20. It's a memorandum
16 | authored by Witness Foelak.

17 | JUDGE CHACHKIN: I'm sure the Bureau will stipulate
18 | that this is a copy of a memorandum which was sent out by Ms.
19 | Foelak.

20 | MS. LADEN: Yes, Your Honor, but we don't stipulate

21 | --

22 | JUDGE CHACHKIN: Well, we're not talking about
23 | relevancy. We're talking -- stipulate that this is an
24 | authentic copy.

25 | MS. LADEN: That's -- we would stipulate to that.

1 MR. HARDMAN: Thank you.

2 JUDGE CHACHKIN: A couple other matters that should
3 be cleared up. There was a motion to delete a footnote and
4 the footnote was included in my Memorandum Opinion and Order,
5 FCC 93M-750, which was released December 14, 1993 and the
6 footnote asserted that RAM's request for admissions were
7 overdue and therefore, the facts were admitted.

8 I'm going to vacate that footnote for the simple
9 reason, as pointed out by Capitol, Capitol did file a timely-
10 filed opposition to a Motion to Compel which was filed on
11 December 10, 1993 and as pointed out in my order, I listed the
12 pleadings which I considered when I ruled on the matter at
13 hand and I did not have before me and did not consider the
14 opposition filed by Capitol. Under those circumstances, I
15 have no choice but to vacate the footnote.

16 Now, insofar as -- I note that the Bureau has
17 included in their exhibits the request for admissions filed by
18 RAM and if the Bureau attempts to offer that in evidence,
19 which they -- I assume they will do, I will then listen to
20 further argument and rule on whether or not I will receive the
21 admissions or not. I'm well aware of your arguments and I'll
22 consider them if and when the Bureau offers it in evidence.

23 MR. HARDMAN: Thank you.

24 JUDGE CHACHKIN: There was another matter and that
25 concerned the Bureau filed a Request to Enlarge Issues, both

1 against Capitol and RAM. The Bureau has not filed a reply.
2 Does the Bureau still wish me to rule on that or are they
3 withdrawing their motion to enlarge?

4 MS. LADEN: Your Honor, my recollection is we did
5 file a reply.

6 JUDGE CHACHKIN: You did file a reply?

7 MS. LADEN: If I could just have a moment to check
8 my files. I have a record of a reply that we filed on
9 December 30, 1993.

10 JUDGE CHACHKIN: All right. I will consider all the
11 pleadings and issue a ruling tomorrow morning. Is the Bureau
12 -- before we -- have the parties agreed on any method in which
13 we're going to proceed? We have a direct case from Capitol
14 and we have a direct case from the Bureau. Should we first
15 rule on the exhibits before we take live testimony or how does
16 the Bureau want to proceed?

17 MS. LADEN: Your Honor, first of all, we have a
18 couple other preliminary matters.

19 JUDGE CHACHKIN: Oh, go ahead then. Go ahead.

20 MS. LADEN: But as far as the exhibits, I think it
21 might be advantageous to identify them all since they're
22 already tabbed and then we could offer them when we have the
23 sponsoring witnesses or when the witness testifies.

24 JUDGE CHACHKIN: All right. Why don't we do that?

25 MS. LADEN: But before that, Your Honor, Ms. Foelak

1 | had some preliminary matters.

2 | JUDGE CHACHKIN: Go ahead, Ms. Foelak.

3 | MS. FOELAK: Your Honor, we would request that
4 | Capitol's witnesses be sequestered during the testimony.

5 | JUDGE CHACHKIN: That will apply to all witnesses.
6 | The only person that will be present in the hearing room will
7 | be the witness who is going to testify. All the other
8 | witnesses will be in the -- potential witnesses will remain in
9 | the witness room until such time after they've completed their
10 | testimony. Once they've completed their testimony, they're
11 | free to stay in the hearing to hear the remaining testimony.
12 | But until such time, they will be sequestered.

13 | MR. HARDMAN: Your Honor, I would ask for two -- and
14 | I believe the proper way is to ask for an exemption from the
15 | sequestration order. First of all, Capitol is entitled to
16 | have a corporate person present at the hearing and a
17 | designated person and that is Mr. Raymond, who is also a
18 | witness in this case, and I believe -- I don't wish to speak
19 | for RAM. But, you know, RAM's in the same boat. Mr. Moyer is
20 | here and I assume he is the -- their corporate person.

21 | Secondly, we have an expert witness giving opinion
22 | testimony and it's essential to the presentation of our case
23 | that he be able to hear the testimony so that his opinion --
24 | the foundation for his opinion is proper.

25 | JUDGE CHACHKIN: I thought he's basing his opinion

1 on material that he read.

2 MR. HARDMAN: That is correct, Your Honor, but it's
3 also essential that the evidence -- you know, that he hear the
4 evidence so that he can testify whether or not it correlates
5 to the information that he was given upon which he did his
6 prepared direct and he also then is -- may give rebuttal
7 testimony.

8 JUDGE CHACHKIN: Well, I have to hear from the
9 Bureau on that.

10 MS. FOELAK: Your Honor, we were going to -- we do
11 request that we may have exempt from sequestration pursuant to
12 Federal Rule 615.2 Mr. James Walker, who is a Commission
13 employee and engineer, as our representative of our party and
14 Mr. Bogert -- Mr. Donald Bogert, also a Commission employee
15 and engineer, again as an expert whose presence is essential
16 to the presentation of our case. He was present in the
17 inspection and so that as complete and understandable a record
18 can be developed --

19 JUDGE CHACHKIN: I don't understand it. You want
20 sequestration, but you don't want sequestration to apply to
21 your witnesses. That doesn't quite make sense. Sequestration
22 applies to everyone or it doesn't apply to anyone.

23 MS. FOELAK: Your Honor, there a number of other
24 witnesses who are owners and employees of RAM that we don't
25 object to sequestration to and we do believe that the Federal

1 Rules of Evidence do enable these exclusions from
2 sequestration.

3 MR. HARDMAN: Your Honor, Capitol has no objection
4 to Mr. Walker and Mr. Bogert being present, assuming that, you
5 know, Mr. Peters is afforded the same consideration.

6 JUDGE CHACHKIN: Mr. Peterson you said?

7 MR. HARDMAN: Mr. Peters -- Arthur Peters.

8 JUDGE CHACHKIN: Oh, Peters. So the Bureau -- is
9 the Bureau agreeable then to have Mr. Peters, Mr. Raymond --
10 Mr. Peters and Mr. Raymond present, also?

11 MS. FOELAK: The Bureau is agreeable to that. We
12 would only ask that Mr. Raymond be the first of Capitol's
13 witnesses, if possible, so that --

14 JUDGE CHACHKIN: Well, the Bureau has the choice of
15 calling which witnesses they want for cross examination.

16 MS. FOELAK: Yes, Your Honor.

17 JUDGE CHACHKIN: For examination. So if you call
18 Mr. Raymond first, he'll be the first witness.

19 MR. HARDMAN: I'm sorry, Your Honor. Mr. Raymond is
20 not --

21 MS. FOELAK: Mr. Raymond is Capitol's witness. I
22 hope I didn't give the wrong impression.

23 JUDGE CHACHKIN: I thought they put in a direct case
24 for Mr. Raymond, didn't you?

25 MR. HARDMAN: We did, but the government -- under

1 the rules, the government has to open. So they have to put on
2 their case first.

3 JUDGE CHACHKIN: No, they can put on any witness.
4 They're not limited. They could put on your witness first if
5 they want to. There's no bar to how they proceed. They could
6 put on your witness as their first witness if they want to.

7 MR. HARDMAN: But Your Honor, they did not name Mr.
8 Raymond as their witness. It's not part of their direct case.

9 MS. FOELAK: Your Honor, to clarify, we do not
10 intend to call ourselves Mr. Raymond first. We intend to call
11 Mr. Moyer and Mr. Walker.

12 JUDGE CHACHKIN: So you have no objection to Mr.
13 Raymond remaining in the hearing room.

14 MS. FOELAK: No.

15 JUDGE CHACHKIN: So Mr. Peters, Mr. Raymond, Mr.
16 Walker, and Mr. Bogert remain in the hearing room. What about
17 Mr. Moyer?

18 MR. JOYCE: Your Honor, I would concur with Ken
19 Hardman's opinion that typically, even under sequestration, an
20 officer or representative of the party, and RAM Technologies
21 is obviously a party to this proceeding, would not be covered
22 by that order.

23 JUDGE CHACHKIN: All right. If the parties agree,
24 those five individuals, namely Mr. Peters, Mr. Raymond, Mr.
25 Moyer, Mr. Walker, and Mr. Bogert will not be subject to the

1 | sequestration rule, but the other --- any other witnesses will
2 | be subject to that rule.

3 | MR. HARDMAN: Thank you, Your Honor.

4 | JUDGE CHACHKIN: Now, how do the parties want to
5 | proceed?

6 | MS. FOELAK: Your Honor, the Bureau would like to
7 | commence its case and as the first thing, I would like the
8 | record to reflect that I'm handing an original and a copy of
9 | the Bureau's exhibits to the court reporter.

10 | JUDGE CHACHKIN: Would someone close the back door,
11 | please?

12 | MS. FOELAK: Next, pursuant to Your Honor's
13 | suggestion, I would like to mark for identification the
14 | Bureau's exhibits.

15 | JUDGE CHACHKIN: Go ahead.

16 | MS. FOELAK: First, Private Radio Bureau Exhibit 1
17 | is RAM Technologies' request for admissions to Capitol
18 | Radiotelephone Company dated October 12, 1993 which is a five-
19 | page exhibit and we would request that be identified by
20 | official notice.

21 | JUDGE CHACHKIN: Official notice?

22 | MS. FOELAK: Well, it was a filing with the
23 | Commission.

24 | JUDGE CHACHKIN: All right. The document described
25 | will be marked for identification as Bureau Exhibit 1.

1 (Whereupon, the document referred
2 to as PRB Exhibit No. 1 was
3 marked for identification.)

4 MS. FOELAK: Secondly, Private Radio Bureau Exhibit
5 2 is a one-page declaration of Robert A. Moyer, Jr. dated
6 October 26, 1990.

7 JUDGE CHACHKIN: The document as described will be
8 marked for identification as Bureau Exhibit 2.

9 (Whereupon, the document referred
10 to as PRB Exhibit No. 2 was
11 marked for identification.)

12 MS. FOELAK: Third, Private Radio Bureau Exhibit No.
13 3 would be an FCC memo dated September 5, 1991 from EIC
14 Baltimore to Chief, Inspections and Investigations Branch,
15 which is five pages.

16 JUDGE CHACHKIN: The document described is marked
17 for identification as Bureau Exhibit 3.

18 (Whereupon, the document referred
19 to as PRB Exhibit No. 3 was
20 marked for identification.)

21 MS. FOELAK: Bureau Exhibit 4 would be an FCC memo
22 dated November 16, 1992 from James Walker or Donald Bogert to
23 Chief, Compliance Branch, which is a three-page memo.

24 JUDGE CHACHKIN: The document is marked for
25 identification as Bureau Exhibit 4.